

AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H. RES. 644
OFFERED BY MR. MCKEON OF CALIFORNIA

Strike all after the resolving clause and insert the following:

1 That the House of Representatives—

2 (1) condemns and disapproves of the failure of
3 the Obama administration to comply with the lawful
4 30-day statutory reporting requirement in executing
5 the transfer of five senior members of the Taliban
6 from detention at United States Naval Station,
7 Guantanamo Bay, Cuba;

8 (2) expresses grave concern about the national
9 security risks associated with the transfer of five
10 senior Taliban leaders, including the national secu-
11 rity threat to the American people and the Armed
12 Forces of the United States;

13 (3) expresses grave concern over the repercus-
14 sions of negotiating with terrorists, even when con-
15 ducted through intermediaries, and the risk that
16 such negotiations with terrorists may further en-
17 courage hostilities and the abduction of Americans;

1 (4) stipulates that further violations of the law
2 set forth in section 1035 of the National Defense
3 Authorization Act for Fiscal Year 2014 (Public Law
4 113–66; 10 U.S.C. 801 note) and section 8111 of
5 the Department of Defense Appropriations Act,
6 2014 (Public Law 113–76) are unacceptable;

7 (5) expresses that these actions have burdened
8 unnecessarily the trust and confidence in the com-
9 mitment and ability of the Obama administration to
10 constructively engage and work with Congress; and

11 (6) expresses relief that Sergeant Bergdahl has
12 returned safely to the United States.

Strike the preamble and insert the following:

Whereas section 1035 of the National Defense Authorization Act for Fiscal Year 2014 (Public Law 113–66; 10 U.S.C. 801 note) requires the Secretary of Defense to notify the appropriate committees of Congress not later than 30 days before the transfer or release of any individual detained at United States Naval Station, Guantanamo Bay, Cuba (hereinafter referred to as “GTMO”);

Whereas on May 31, 2014, the Department of Defense transferred five Taliban detainees held at GTMO to the State of Qatar;

Whereas according to declassified United States government documents, the five detainees were all senior Taliban leaders: Abdul Haq Wasiq was the Taliban Deputy Minister of Intelligence, Mullah Norullah Noori was the Taliban military commander at Mazar-e-Sharif, Mullah

Mohammad Fazl was the Taliban Deputy Minister of Defense, Khairullah Said Wai Khairkwa was the Taliban Minister of Interior, and Mohammad Nabi Omari was the Taliban communications chief and border chief;

Whereas these five senior Taliban leaders have had associations with al-Qaeda or have engaged in hostilities against the United States or its coalition partners;

Whereas these five senior Taliban detainees held leadership positions within the Taliban in Afghanistan when it provided safehaven for al-Qaeda to conduct planning, training, and operations for the September 11, 2001, attacks;

Whereas in 2010, after an extensive evaluation meant to identify detainees who could be transferred out of the detention facility at GTMO, the Obama administration determined that these five should remain in United States detention because they were “too dangerous to transfer” because each “poses a high level of threat that cannot be mitigated sufficiently except through continued detention”;

Whereas the President has stated that there is “absolutely” the “possibility of some” of these former Taliban detainees “trying to return to activities that are detrimental to” the United States;

Whereas other former GTMO detainees that were transferred have become leaders of al-Qaeda affiliates actively plotting against the United States and are “involved in terrorist or insurgent activities”;

Whereas Secretary of Defense Chuck Hagel testified before the Committee on Armed Services of the House of Representatives that, pursuant to an agreement with Qatar, the five former detainees transferred in May would not

be allowed to leave Qatar for one year, but after that date there would be no restrictions on the movement of the former detainees;

Whereas notwithstanding the fact that Qatar is an important regional ally, after another GTMO detainee was transferred to Qatar in 2008, Qatar apparently had difficulty implementing the assurances Qatar gave the United States in connection with that detainee's transfer;

Whereas senior officials in the Obama administration negotiated, through intermediaries in the government of Qatar, with the Taliban, and with the Haqqani Network, which the Department of State has designated as a foreign terrorist organization, and which held Sergeant Bowe Bergdahl captive;

Whereas Secretary Hagel testified to the Committee on Armed Services of the House of Representatives that negotiations for the transfer of the five Taliban detainees in exchange for Sergeant Bergdahl began in January 2014;

Whereas the General Counsel of the Department of Defense signed a memorandum of understanding with the Attorney General of the State of Qatar on May 12, 2014, regarding the security conditions for transfer of these five Taliban detainees;

Whereas in addition to an unknown number of officials of Qatar, senior Obama administration officials acknowledge that approximately 80 or 90 individuals within the Obama administration were knowledgeable of the planned transfer of the five Taliban detainees prior to their transfer;

Whereas Congress was not notified of the transfer until June 2, 2014, three days after such individuals were transferred, and 33 days after the date on which such notification was required by section 1035 of the National Defense Authorization Act for Fiscal Year 2014 (Public Law 113–66; 10 U.S.C. 801 note) and section 8111 of the Department of Defense Appropriations Act, 2014 (Public Law 113–76);

Whereas the Secretary of Defense, in consultation with the President and other senior Obama administration officials, did not comply with the 30-day notification requirement;

Whereas article II, section 3 of the Constitution stipulates that the President “shall take care that the laws be faithfully executed”;

Whereas on January 15, 2009, the Office of Legal Counsel in the Department of Justice acknowledged that, under article I of the Constitution, Congress possesses legislative authority concerning the detention and release of enemy combatants;

Whereas the Obama administration has complied with the law in all other detainee transfers from GTMO since the date of the enactment of prevailing law; and

Whereas in 2011, after leaders of the Senate and House of Representatives expressed their bipartisan opposition to the prospective transfer of these Taliban detainees from GTMO, senior Obama administration officials assured these Senators and Members of Congress that there would be no exchange of Taliban detainees for Sergeant Bergdahl, and that any transfer of Taliban detainees that might otherwise occur would be part of a reconciliation

effort with the Taliban and the Government of Afghanistan and that such a transfer would only take place in consultation with Congress pursuant to law: Now, therefore, be it

Amend the title so as to read: “Condemning and disapproving of the failure of the Obama administration to comply with the lawful statutory requirement to notify Congress before transferring individuals detained at United States Naval Station, Guantanamo Bay, Cuba, and expressing concern about the national security risks over the transfer of five Taliban leaders and the repercussions of negotiating with terrorists.”.

